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Intellectual Property Administration  
P.O. Box 272400  
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| EXAMINER |
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RUHL, DENNIS WILLIAM

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3629

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10/03/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/931,825

**Applicant(s)**

BLAIR ET AL.

**Examiner**

Dennis Ruhl

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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With respect to the declaration filed under 37 CFR 1.131 it has been considered but is not found as persuasive. The examiner has applied new prior art in this action so this issue is moot; however, the examiner will address it briefly. The evidence submitted to show conception of the invention is not commensurate with the claims. Where does the evidence discuss any "proving" of the initial application? The examiner cannot find this in the documents submitted as evidence. Applicant has the responsibility of pointing out what is relied upon in the evidence for supporting particular claim limitations. Applicant has not provided any explanation at all regarding what the evidence is alleged to show and how this related to the claims. All the inventors have done is a cut and paste language from the specification into the body of the declaration with no discussion as to how the evidence supports what is claimed in the claims. Overall the examiner has trouble accepting this evidence as being persuasive. After reviewing the evidence multiple times, the examiner is not clear how this supports what is claimed. Applicant has not clearly explained this to the examiner and it is not up to the examiner to try to figure this out. The 131 declaration is ineffective and is not persuasive. This is a moot point in the opinion of the examiner because of 102(b) type of art that is being newly applied to the claims.

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1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-6 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Applicant should take notice that the claims are rejected for multiple reasons as set forth below.

For claims 1,2,5,6, the claims are not considered to be reciting statutory subject matter. 35 USC 101 limits the types of subject matter that is eligible for patent protection. Not all methods are patentable under 35 USC 101. Claim 1 and 2 are reciting a method that involves only humans and human intelligence in executing the claimed steps. A process type of statutory claim must be either (1) tied to a particular apparatus, or (2) operated to change materials to a different state or thing. Claims 1 and 2 are not tied to any particular apparatus and do not operate to change anything from one state to another. As stated in the recent decision by the Federal Circuit in the case of *In re Stephen W. Comiskey*, "*mental processes, or processes of human thinking, standing alone are not patentable even if they have a practical application.*" The instant claims are not tied to another statutory class of invention and depend 100% on the use of human mental processes. The application of humans and their minds/intelligence to solve practical problems is not in and of itself patentable. Claims 1 and 2 are considered non-statutory for this reason.

For claims 1,2,5,6, the examiner views the claims as simply reciting an "abstract idea" that is specifically excluded from being eligible for patent protection by 35 USC 101. Applicant is just claiming a very generic and broad abstract idea of how a product

is to be developed and there is no practical application claimed. In determining what the applicant has actually invented, the examiner has consulted the instant specification and notes that there is no substantive discussion about this invention other than in an abstract sense and there is no disclosed actual application to anything specific that would constitute a "practical application" as far as 35 USC 101 is concerned. Clearly no practical application has been claimed. The claims 1 and 2 are reciting an abstract idea and their allowance would act to preclude any and all product development in the United States when the product is in part developed from existing technology (this would be preemption). Claims of this type are specifically excluded from being eligible for patenting by 35 USC 101. Applicant is not entitled to patent a process claim that covers every conceivable application of that process, as this is best understood by the examiner this is what is known as "preemption" as far as 35 USC 101 is concerned. Allowance of these claims would not foster more innovation by our society, they would stifle innovation and prevent further product research and development. This is not what patents were intended to cover as far as the "useful arts" goes.

For claims 1,2,5,6, the examiner does not find that the process produces a useful, tangible, and concrete result. All of the steps are totally dependent on people and their intelligence/minds making certain decisions. The specification provides not guidance whatsoever as far as how this process is to be accomplished. The specification is lacking in guidance to such an extent that the claimed process is not considered to be repeatable to any substantial degree that would allow the same results to be achieved. The process is not concrete. As far as any alleged result is concerned,

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the examiner does not feel that there is any tangible result to what is claimed. The language claiming "developing products" does not even require anything to be produced in the real world. The developing products step can be just a mental step of thinking about what products can be made (i.e. mental development). This does not result in a useful, tangible and concrete result as is required by 35 USC 101.

For claims 5,6, additionally, there is no result occurring when you just task a group with a thing to do. It does not require that they actually do anything. People are tasked to do things all the time, but frequently nothing is done and there is no result to the step of tasking. To claim that a group is "tasked" is not a process that even has a result. The examiner believes that claim 5 is more clearly lacking in a concrete, useful, and tangible result. There is no result at all.

For claims 3,4, the "system" as claimed is not statutory. None of the elements claimed fall into any one of the allowable statutory classes of invention so the claim is not directed to statutory subject matter. The "groups" claims are really people, which are not allowed to be claimed in apparatus types of claims. The "goals" that are claimed are not even real world tangible things, they are intangible concepts. The "process" that is claimed is not a real world tangible thing. The claimed "goals" and "process" do not define any structure that could possibly constitute a system (apparatus). With respect to claiming the "groups", that applicant freely admits are groups of human beings, this is not an allowable statutory class of invention. Humans are not an apparatus and are not a process of doing anything. Applicant is very incorrect in their arguments that groups of people can be patented. 35 USC 101 specifically excludes humans from being

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claimed in apparatus types of claims. Humans can be part of process claims but cannot be claimed as an element of an apparatus type of claim, which is what applicant is doing. People are not "property" and cannot be owned. Claiming a system, where the only real world structure claimed are groups of humans, is essentially claiming the groups of people as an intellectual property right, which is not statutory.

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1,2,5,6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Upon a review of the specification for guidance on how the claimed steps are to be executed and performed, it is found that there is no further discussion provided. Applicant has only disclosed an abstract idea of a general process that is not limited to anything specifically as far as a product goes. With respect to practicing the claimed invention, one of skill in the art is left simply guessing as to how the claimed steps are supposed to be executed. The very purpose of patents is to convey useful information to the public so that further innovation is fostered. With this in mind, upon a review of the specification, it is not clear at all as to what applicant has allegedly invented other

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than just an abstract idea. The specification provides not details or guidance on how one of skill in the art should go about identifying an entry vehicle that is not too narrow but broad enough as claimed. Nothing is disclosed about how the step of "proving" is accomplished. What is required to do this step? This is not clear. The specification is so broad that it is not considered to be an enabling disclosure. If applicant has invented a new process as alleged, then what are the steps that are involved and how are they actually performed? This has not been disclosed. The specification does not provide enough information to enable one skilled in the art to practice the claimed invention without undue experimentation. Each step could feasibly be performed in different manners and one of skill in the art would have no idea what the actual "novel" method is. A person skilled in the art attempting to practice the claimed invention would more or less be left to himself or herself to develop the actual process itself and figure out how the claimed steps are to be performed because applicant has not disclosed anything about the process that enables its use and practice, other than the abstract idea of the process itself. The claims are not enabled.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.



For claim 1, with respect to the language "proving the technological concept for the entry vehicle application", what is being proved? This is not claimed and renders the claim as indefinite. Applicant must claim what it is that is being provided to make it clear what is being claimed. The examiner also notes that the preamble recites that the method is for "presenting marketable products to a new or existing customer base". It is not clear if the claim requires any presentation step where products are presented to any customers. There is not step of presenting in the body of the claim but this is part of the recited method in the preamble. Is a presentation step required? This is not clear.

For claims 2,4,6, the scope of this claim is not clear at all. What does reciting that the entry vehicle application is "narrow enough in scope to reduce development time" and that it is "broad and flexible enough to be applicable to additional applications" mean? What does this require? What kinds of entry vehicle applications are inside the scope of this claim and what kinds are not? This is not clear. One wishing to avoid infringement would want to know what the metes and bounds of this claim is so they can ensure that they are not infringing. This language is so vague and unclear that one wishing to avoid infringement would not have been reasonably made aware of the scope of this claim. This claim is indefinite and the examiner has no idea as to what the scope of this claim is.

For claim 3, it is not clear as to what the system is that applicant is attempting to claim. A system claim is this one is interpreted to be an apparatus type of claim. Nothing in the body of the claim is reciting anything that would constitute part of a

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system. "Goals" are not real world things and are not recitations directed to structure of a system. The "process" claimed is also not a real world thing. The claimed "groups" are really people, and they cannot define an apparatus. What is there claimed that can possibly constitute a system? Nothing has been claimed in the opinion of the examiner and because of this reason the claim is not definite. One wishing to avoid infringement would have no idea what the system is structurally that is being claimed. The language of "the decision process including identifying an entry vehicle application" leads the examiner to question if this is a method claim? How can applicant claim a method step as part of a system? IT is not clear what the system that is being claimed is made up of because nothing recited in the body of the claim defines any structure to any kind of system/apparatus.

For claim 5, what statutory class of invention is this claim? The language "In a business" seems to indicate that the claim is directed to an apparatus. Applicant appears to be using a "Jepson format" type of claim for an improvement. Then the claim recites "a method for streamlining a product development process comprising". Is this an apparatus or a method type of claim? This is not clear. As best understood by the examiner it has been treated as a process claim. Also not clear is whether or not an entry vehicle application selection step is required. It is claimed that the research group is tasked to develop a new technology to be used in an entry vehicle application. No new technology is ever actually developed, only the tasking of the research group. If no new technology has been developed and all that is claimed is the tasking step, is there an entry vehicle selection step occurring? Wouldn't the new technology have to come

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first so you know what it is, so you can develop a product from that new technology?

The entry vehicle application depends directly on the developed technology so if the technology is not developed, is there an actual step of selection occurring? It is not clear if the step of selecting the entry vehicle application is part of the claim, or if this is a step that occurs in the future once the new technology is developed. Or is this claiming that the entry vehicle application came before the new technology? If this is what is being claimed then the step of selecting an entry vehicle application has already happened and is not part of the claimed method. If the new technology were developed for an entry vehicle application, then one would assume that the selection of the entry vehicle was already known as of the "tasking step", which means that this step has already happened and is not part of the method being claimed. Claim 5 is indefinite.

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1,2, are rejected under 35 U.S.C. 102(b) as being anticipated by the article "The Global Positioning System".

For claims 1,2, the article discloses that in a 1973 meeting at the Pentagon, the idea of a GPS system was conceived. This initial idea is the claimed "specific technological concept" that was identified and then developed into a product. The initial

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application (entry vehicle application) is the use by the military of the GPS system once it was operational. This was started in 1978 and was at full capacity and finished in 1993. The system proved it worked. It worked so well in fact that private companies pressured the United States government into allowing the GPS system to be used for commercial purposes. This is where the claimed identification of "additional applications" for the proven concept (GPS) is found. The proven concept of GPS was taken from the military and adapted for use in the civilian/commercial side. The article discloses some examples of the various products that have been developed based on this initial concept of GPS that was developed in 1973. The various applications/products include many types of vehicles using GPS for accurate positioning and maps of routes, such as cars, trucks, boats, and planes. Another application is the use of GPS technology in mapping and surveying. Earthquakes and the shifting of the earth's tectonic plates are even disclosed as being monitored by using GPS technology. This article discusses a specific example of the broad abstract idea that is claimed in claims 1 and 2.

9. Claims 1,2, are rejected under 35 U.S.C. 102(b) as being anticipated by the article "Adept, Adapt, Adopt, Three hurdles for new products".

For claims 1,2, the article discloses the idea of using military technology and developing new products from that technology. The military has developed a specific technological concept into an entry vehicle application. An example is found on page 815 where it is discussed that scientists and the Wright Laboratory developed some

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sophisticated electro-optics for a military purpose. The entry vehicle application is the military use of the electro-optics. Then it is disclosed that the scientists became aware of another problem in the medical field. They applied their military developed electro-optics to make a medical breakthrough. This is the act of taking that entry vehicle application and identifying additional applications that it can be used in and developing a new product. This is the essence of this article. Take a proven technological concept and use it to develop and market new products.

10. Claims 3,4, are rejected under 35 U.S.C. 102(b) as being anticipated by Abelow (5251294).

For claim 3, the examiner has treated the claims as reciting nothing more than 3 groups of people that are able to do certain things. The claimed "goals" and "process" are not defining anything that is tangible and real. Weight is not given to these limitations in these system claims. The only real thing claimed is groups, which are actually groups of people. To that extent, Abelow in column 11, lines 12-36 discloses that with respect to a business that is trying to reach a goal for a particular product (doubling battery life), there are various departments involved such as a research and development team, product design and marketing, manufacturing, distribution channel, etc.. This anticipates what is claimed because there are 3 groups of people disclosed, which is what is claimed. People are inherently able to conduct research (just like the job of a patent examiner who is a human being), are able to adapt products, and are able to market products as claimed. The functional language about each group can

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inherently be performed by groups of people, especially the groups of people disclosed by Abelow (research and development team, product design and marketing, manufacturing, distribution channel).

For claim 4, the "entry vehicle application" is not part of the system and is not a real world tangible thing that defines any structure to a system. This claim is not reciting anything further as far as structure goes and is satisfied by what is discussed for claim 3 above.

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. Claims 3,4,5,6, are rejected under 35 U.S.C. 103(a) as being unpatentable over "Adept, Adapt, Adopt, Three hurdles for new products".

For claims 3,4, the only things claimed that are real world are the "groups". The groups are really just groups of people. The "goals" and "process" claimed define nothing structurally to a system. The article discloses on page 814 the existence of a "research department", which is a research group. Also disclosed are "manufacturing people" that are to adopt new methods. This is considered to be the "development group" that is claimed. Not disclosed is a "commercialization group". The examiner sees this as being more or less a marketing group that is trying to market the product and bring it to market. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a "commercialization group" that markets the product. All that is claimed is 3 groups of people, two of which are disclosed by the article. Clearly when one is developing a new product, one has to have a marketing plan and one of ordinary skill in the art is very aware of having a team that concentrates on marketing and bringing the actual product to market in a successful manner. To add a commercialization group to the article is obvious to one of ordinary skill in the art.

For claims 5,6, the article discloses on page 814 the existence of a "research department", which is a research group. Also disclosed are "manufacturing people" that are to adopt new methods. This is considered to be the "development group" that is claimed. Not disclosed is a "commercialization group". The examiner sees this as being more or less a marketing group that is trying to market the product and bring it to

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market. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a "commercialization group" that markets the product. Clearly when one is developing a new product, one has to have a marketing plan and one of ordinary skill in the art is very aware of having a team that concentrates on marketing and bringing the actual product to market in a successful manner. To add a commercialization group is obvious to one of ordinary skill in the art. With respect to the recitation of having all 3 groups decide on the entry vehicle application, this is not disclosed. One of ordinary skill in the art at the time the invention was made would have found it obvious to have these 3 groups get together to decide on the entry vehicle application so that more input is gathered and more experienced people are in on the decision making process. One would expect that the more people you have looking at a problem or task, the more likely you are to get a better solution. This is a result that is predictable and would be expected.

14. Applicant's arguments have been fully considered but they are not persuasive.

With respect to the 101 rejection, applicant's arguments are moot based on the new grounds of rejection and the recent decision of *In re Stephen W. Comiskey*, which is a precedential decision that has clarified the issue regarding what is statutory subject matter. The PTO urged the court to clarify the position on 35 USC 101 with respect to statutory subject matter so that the office can have guidance on this issue. The court did exactly that and the facts (claimed subject matter) of this application seem very much commensurate with the issues decided in *In re Stephen W. Comiskey*. A decision



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by the federal courts trumps a decision by the Board of Patent Appeals and Interferences, so arguing *Ex Parte Lundgren* is not persuasive.

With respect to the claiming of humans in system claims 3 and 4, the argument is not persuasive. The patent laws have never allowed an applicant to claim people as part of their invention when dealing with system claims. Claim 3 is directed to nothing more than 3 groups of people, which is not statutory. Applicant has even admitted that these groups are made up of people on page 9 of the response. Contrary to what has been argued, the claiming of groups that includes people does render the claim as non-statutory. Humans are not man-made, they are not an apparatus, and they are not a process by which something is done. Claims 3 and 4 do not fall into any one of the allowable statutory classes of invention. Groups of people may be put together or assembled by other people, but that reason is not sufficient to conclude that the inventors are entitled to patent the groups themselves. The examiner also notes the existence of the 13<sup>th</sup> amendment to the constitution which forbids ownership of people, which is what applicant is more or less claiming as their intellectual property. Not everything in the world is patentable, especially groups of human beings as is being claimed. These claims as a whole are reciting nothing more than groups of humans, which is not statutory subject matter.

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Roosevelt et al. (20020147627) discloses a product development process.

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16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 571-272-6808. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



**DENNIS RUHL**  
**PRIMARY EXAMINER**